

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 3703.

October Term, 1925, April Session, 1926.

Jessie L. Wickwire, Individually
and as Executrix and Trustee
under the Last Will and Testa-
ment of Edward L. Wickwire,
Deceased,

Plaintiff in Error,
vs.

Mabel G. Reinecke, as Collector
and as Acting Collector of In-
ternal Revenue, etc.,

Defendant in Error.

Error to the District Court
of the United States for the
Northern District of Illi-
nois; Eastern Division.

June 10, 1926.

Before EVANS, PAGE and ANDERSON, *Circuit Judges*.

Opinion by PAGE, *Cir. J.*

This is a suit by an executrix to recover money paid under protest on behalf of her testator's estate to the Collector of Internal Revenue at Chicago. Its payment was required on the theory that the money and securities taxed, though given to testator's wife four months before testator's death, were actually given in contemplation of death and were subject to taxation.

After plaintiff's opening statement, a stipulation as to evidence, and a tender of other evidence, whereby the facts were fully disclosed to the court and jury, the court directed a verdict for defendant.

From the whole record, we find that there was no error, even though the instruction was given on the ground that the case was controlled by *Park Falls Lumber Co. v. Burlingame*, 1 Fed. (2d) 885. The only question there was as to the correctness of the amount of a tax assessed against property admittedly belonging to the plaintiff, a matter within the

sound discretion of the administrative officers (*Ray Copper Co. v. U. S.*, 268 U. S. 373, 377). Inasmuch as in this case neither the amount of the tax, nor the method of making the assessment, is questioned, the only question is, Was the transfer to the wife made in contemplation of death? That question is possibly a judicial one, to be finally determined by the courts, and we are of opinion that the Park Falls Lumber Company case does not control. Notwithstanding this, the case, on the whole record, should be, and is, affirmed.

And on the same day, to wit: On the tenth day of June, 1926, the following further proceedings were had and entered of record, to wit:

Thursday, June 10, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.

Hon. George T. Page, Circuit Judge.

Hon. Albert B. Anderson, Circuit Judge.

Edward M. Holloway, Clerk.

Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Hon. Albert B. Anderson, Circuit Judge.

Jesse L. Wickwire, Individually
and as executrix and trustee under
the last will and testament of
Edward L. Wickwire, Deceased,

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vs.

Mabel G. Reinecke, as Collector
and as acting Collector of Internal
Revenue First District of
Illinois.

Error to the District Court
of the United States for the
Northern District of Illinois;
Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division and was argued by counsel.

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After plaintiff's opening statement, a stipulation as to evidence, and a tender of other evidence, whereby the facts were fully disclosed to the court and jury, the court directed a verdict for defendant.

From the whole record, we find that there was no error, even though the instruction was given on the ground that the case was controlled by *Park Falls Lumber Co. v. Burlingame*, 1 Fed. (2d) 885. The only question there was as to the correctness of the amount of a tax assessed against property admittedly belonging to the plaintiff, a matter within the

sound discretion of the administrative officers (*Ray Copper Co. v. U. S.*, 268 U. S. 373, 377). Inasmuch as in this case neither the amount of the tax, nor the method of making the assessment, is questioned, the only question is, Was the transfer to the wife made in contemplation of death? That question is possibly a judicial one, to be finally determined by the courts, and we are of opinion that the Park Falls Lumber Company case does not control. Notwithstanding this, the case, on the whole record, should be, and is, affirmed.

And on the same day, to wit: On the tenth day of June, 1926, the following further proceedings were had and entered of record, to wit:

Thursday, June 10, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.

Hon. George T. Page, Circuit Judge.

Hon. Albert B. Anderson, Circuit Judge.

Edward M. Holloway, Clerk.

Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Hon. Albert B. Anderson, Circuit Judge.

Jesse L. Wickwire, Individually
and as executrix and trustee under
the last will and testament of
Edward L. Wickwire, Deceased.

3703

vs.

Mabel G. Reinecke, as Collector
and as acting Collector of Internal
Revenue First District of
Illinois.

Error to the District Court
of the United States for the
Northern District of Illinois;
Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

And afterwards, to wit: On the twenty-second day of June, 1926, there was filed in the office of the clerk of this court a certain petition for a rehearing, which said petition for a rehearing is not made a part of this record.

And afterwards, to wit: On the twenty-fourth day of June, 1926, the following further proceedings were had and entered of record, to wit:

Thursday, June 24, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.

Hon. George T. Page, Circuit Judge.

Hon. Albert B. Anderson, Circuit Judge.

Edward M. Holloway, Clerk.

Palmer E. Anderson, Marshal.

3703 Jessie L. Wickwire, etc. vs. Mabel G. Reinecke as Collector, etc.	}	Error to the District Court of the United States for the Northern District of Illi- nois; Eastern Division.
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On motion of counsel for defendant in error it is ordered by the court that the time for filing a reply to the petition for a rehearing in this cause be, and the same is hereby extended ten days from the time allowed by the rules of this court.

And afterwards, to wit: On the twenty-ninth day of September, 1926, the following further proceedings were had and entered of record, to wit:

Wednesday, September 29, 1926.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Evan A. Evans, Circuit Judge, presiding.

Hon. George T. Page, Circuit Judge.

Edward M. Holloway, Clerk.

Palmer E. Anderson, Marshal.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. George T. Page, Circuit Judge.

Hon. Albert B. Anderson, Circuit Judge.

Jessie L. Wickwire, etc.

vs.

3703

Mabel G. Reinecke as Collector, etc.

} Error to the District Court
of the United States for the
Northern District of Illi-
nois: Eastern Division.

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages, numbered from 1 to 6, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and the petition for a rehearing) in the case of

Jessie L. Wickwire, Individually and as Executrix and Trustee under the Last Will and Testament of Edward L. Wickwire, Deceased,

vs.

Mabel G. Reinecke, as Collector and as acting Collector of Internal Revenue, First District of Illinois

No. 3703, October Term, 1925, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Twelfth day of November, A. D. 1926.

(Seal)

EDWARD M. HOLLOWAY,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 10, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed response to such writ.